

(2) The nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be affirmed in part and modified in part to award claimant additional temporary total disability and medical benefits.

(1) The parties stipulated that claimant sustained personal injury by accident arising out of and in the course of employment with the respondent on November 22, 1994. At oral argument before the Appeals Board, the parties stipulated that temporary total disability benefits were underpaid and should have been ordered paid for 15.71 weeks at \$214.68 per week.

(2) As in many workers compensation proceedings, the medical evidence pertaining to claimant's injuries is diametrically opposed. Both of the physicians selected by claimant's attorney to examine and evaluate claimant, namely Blake C. Veenis, M.D., and Ernest R. Schlachter, M.D., testified that claimant sustained permanent injury as a result of the November 22, 1994, accident. However, the physician who treated claimant, board-certified orthopedic surgeon C. Reiff Brown, M.D., testified that claimant displayed bizarre symptoms and exaggerated his complaints. Dr. Brown doubted that claimant sustained any permanent injury in the November 1994 incident.

All three physicians who testified agreed that claimant's symptoms and complaints were exaggerated. Dr. Schlachter testified that claimant behaved so strangely that it was difficult to interpret the physical examination and determine the degree of impairment. Despite his diagnosis of chronic cervical sprain and lumbar disc disease, Dr. Schlachter attributed claimant's bizarre complaints to psychogenic overlay. Dr. Veenis also believed that claimant displayed symptom magnification and exaggeration but felt claimant had myofascial pain.

Because Dr. Brown treated claimant for this work-related injury as well as for an earlier knee injury, the Appeals Board finds that Dr. Brown was in a better position to assess claimant's demeanor and complaints to determine the nature and extent of claimant's injuries. Dr. Brown was in the unique position of having examined claimant on several occasions and having seen claimant function in the work-hardening program. Based upon the medical testimony, the Appeals Board finds that claimant displayed both severe atypical pain behavior and inconsistent effort on certain clinical tests administered by Dr. Brown. Further, claimant's subjective complaints did not match the anatomical or clinical findings. Based upon the entire record, the Appeals Board finds that claimant has failed to prove he sustained permanent injury as a result of the November 22, 1994, accident. The Administrative Law Judge's Award should be affirmed to the extent it denied claimant's request for permanent partial disability benefits.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated July 16, 1996, entered by Administrative Law Judge Jon L. Frobish should be, and hereby

is, affirmed in part to the extent it denied claimant's request for permanent partial disability benefits, and modified in part to award claimant 15.71 weeks of temporary total disability benefits at \$214.68 per week, and medical benefits consisting of those previously provided.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Ernest Wayne Vanaman, and against the respondent, Blue Goose Drilling Co., Inc., and its insurance carrier, U.S.F.&G., for an accidental injury which occurred November 22, 1994, and based upon an average weekly wage of \$322.00 for 15.71 weeks of temporary total disability compensation at the rate of \$214.68 per week, making a total award of \$3,372.62, which is ordered paid in one lump sum less any amounts previously paid.

The Appeals Board hereby adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David H. Farris, Wichita, KS
Billy E. Newman, Topeka, KS
Office of Administrative Law Judge, Garden City, KS
Philip S. Harness, Director